

3006194-LRB/SJE/msw

ARDC: 6286111

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEWIS HERRING,

Plaintiff,

v.

RICHARD E. MARR and FFE
TRANSPORTATION SERVICES, INC.,
an Illinois Corporation,

Defendants.

No. 07 C 7215

MOTION TO COMPEL

NOW COME the defendants, FFE TRANSPORTATION SERVICES, INC. and RICHARD E. MARR, by and through their attorneys, Lew R.C. Bricker, Sandra J. Engelking, and SmithAmundsen LLC, and hereby move this Honorable Court, pursuant to Federal Rule of Civil Procedure 37(a)(3), to enter an Order compelling the Plaintiff to supplement his answers to discovery with his Social Security Disability records and compelling the Plaintiff to provide an executed Authorization for Release of Information from the Social Security Administration. In support of their Motion, Defendants state as follows:

1. During plaintiff's deposition, which proceeded on June 4, 2008, plaintiff testified that he had filed an application for Social Security Disability Benefits on three to four occasions as a result of the motor vehicle accident that is at issue in this case.
2. On June 23, 2008, defense counsel forwarded an Authorization for

Release of Information from the Social Security Administration to plaintiff's counsel for execution by the plaintiff so that defense counsel could obtain records pertaining to plaintiff's applications.

3. On June 30, 2008, defense counsel attempted to send correspondence to plaintiff's counsel requesting records and information pertaining to plaintiff's applications for Social Security Disability Benefits.

4. Defense counsel called plaintiff's counsel on July 8, 2008 to discuss upcoming depositions and the status of plaintiff's Social Security Disability records. During that telephone call, plaintiff's counsel indicated that he had not received the June 30, 2008 correspondence.

5. As such, on July 9, 2008, defense counsel sent correspondence to plaintiff's counsel attaching the June 30, 2008 correspondence and renewing its request for records and information pertaining to plaintiff's applications for Social Security Disability Benefits and again requesting the plaintiff to execute an Authorization for Release of Information from the Social Security Administration. (See Correspondence dated July 8, 2008, which encloses the June 30, 2008 correspondence and an additional copy of the Authorization, attached as Exhibit "A".)

6. Plaintiff has yet to provide an executed copy of the Authorization for Release of Information from the Social Security Administration.

7. Plaintiff has yet to provide information and/or records pertaining to his multiple applications for Social Security Disability Benefits.

8. An e-mail was sent to plaintiff's counsel on July 23, 2008 inquiring as to

the status of the Social Security Disability records and Authorization. Plaintiff's counsel did not respond to that e-mail. (See e-mail attached as Exhibit "B".)

9. A voicemail was left for plaintiff's counsel on July 23, 2008 regarding the status of the Social Security Disability records and information as well as the status of the Authorization for Release of Information from the Social Security Disability Administration. As of the filing of this Motion, plaintiff's counsel has not responded to the voicemail.

10. A motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." *In re Sulfuric Acid Antitrust Litigation*, 2005 U.S. Dist. LEXIS 21752 (N.D. Ill. 2005). Defense counsel has attempted in good faith to resolve this matter without court intervention as illustrated by Exhibits "A" and "B".

11. Defendants must conduct discovery, including a review of the records associated with plaintiff's multiple applications for Social Security Disability Benefits, in order to fully evaluate the matter prior to the close of fact discovery on August 11, 2008. They cannot do so without the executed Authorization from the plaintiff or without the records and information from the plaintiff pertaining to his multiple applications for Social Security Disability Benefits.

12. Accordingly, Defendants respectfully request that this Court compel the plaintiff to (1) provide an executed Authorization for Release of Information from the Social Security Administration, and (2) seasonably supplement his discovery to provide

records and other requested information pertaining to his multiple applications for Social Security Disability Benefits.

WHEREFORE, Defendants, FFE TRANSPORTATION SERVICES, INC. and RICHARD E. MARR, respectfully request that this Court enter an Order compelling the plaintiff to (1) provide an executed Authorization for Release of Information from the Social Security Administration, and (2) seasonably supplement his discovery to provide records and other requested information pertaining to his multiple applications for Social Security Disability Benefits. Defendants pray for further and other relief as is provided in Federal Rule of Civil Procedure 37 as this Court deems proper and just.

Respectfully submitted by,

S/ Sandra J. Engelking
Sandra J. Engelking - 6286111
Attorney for Defendants, Richard E. Marr
and FFE Transportation Services, Inc.
SmithAmundsen LLC
150 N. Michigan Avenue, Suite 3300
Chicago, IL 60601
(312) 894-3200
(312) 894-3210 (fax)
sengelking@salawus.com

Lew R. C. Bricker
Sandra J. Engelking
Attorneys for Defendants, Richard E. Marr
and FFE Transportation Services, Inc.
SmithAmundsen LLC
150 North Michigan Avenue, Suite 3300
Chicago, IL 60601
(312) 894-3200

EXHIBIT “A”

July 8, 2008 Correspondence



Sandra J. Engelking
Direct Dial: (312) 894-3287

July 8, 2008

VIA FACSIMILE (815) 730-1934

Mr. Scott Pyles
Rathbun Cservenyak & Kozol LLC
3260 Executive Drive
Joliet, Illinois 60431

Re: Lewis Herring v. Richard E. Marr and FFE Transportation Services, Inc.
Court No.: 07 L 754
Our File: 3006194-LRB/SJE

Dear Mr. Pyles:

Enclosed please find Lew Bricker's correspondence dated June 30, 2008 pertaining to your client's Social Security disability records. It came to my attention during our telephone conversation today that you may not have received this fax, and as such, I am resending.

I also enclose again an Authorization for Release of Information from the Social Security Administration for execution by your client which was previously sent to your attention on June 23, 2008.

Please forward the documents requested in the enclosed June 30, 2008 letter as well as an executed Authorization within 7 days (on or before July 15, 2008) so that we can avoid any Motions before the Court.

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in cursive script that reads 'Sandra Engelking'. Below the signature is a large, loopy flourish that extends to the right.

Sandra J. Engelking

SJE/msw
Enclosures



Lew R. C. Bricker
Direct Dial: (312) 894-3224

June 30, 2008

VIA FACSIMILE (815) 730-1934

Mr. Scott Pyles
Rathbun Cservenyak & Kozol LLC
3260 Executive Drive
Joliet, Illinois 60431

Re: Lewis Herring v. Richard E. Marr and FFE Transportation Services, Inc.
Court No.: 07 L 754
Our File: 3006194-LRB/SJE

Dear Mr. Pyles:

I write in follow up to the plaintiff's disclosures regarding his application for Social Security Disability. Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, please provide us with the following information and documents within seven (7) days:

- a. The name of the attorney prosecuting the Social Security Disability Application for the plaintiff;
- b. A complete copy of the Social Security Disability Application, correspondence, and all materials submitted by the plaintiff or on behalf of the plaintiff for any applications for Social Security Disability;
- c. The names of all physicians in accordance with our discovery requests and Rule 26 examining and/or reporting on the plaintiff's condition;
- d. Any and all records in the possession of the plaintiff or his counsel regarding any Social Security findings, determinations, applications, rejections of disability requests or related items.

This request should not have needed to be sent. The Federal Rules of Civil Procedure demand constant supplementation by parties. That has not been done here. The District Judge was quite unhappy with the delays that arose because of our failure to complete discovery. This is another example of that problem. Based upon the Judge's anger when we were last in Court, if

Mr. Scott Pyles
June 30, 2008
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we do not receive compliance within seven (7) days, we will be filing a Motion to Compel with the Court.

We look forward to hearing from you.

Sincerely,

Lew R. C. Bricker

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AUTHORIZATION FOR RELEASE OF INFORMATION

NAME OF BENEFITEE: Lewis Herring

D.O.B.: 5/4/53
SSN: 252-86-4608

INSTITUTION'S ADDRESS:

Social Security Administration
600 West Madison Street
10th Floor
Chicago, IL 60661

I hereby authorize the Social Security Administration to release information to:

Lew R. C. Bricker
SmithAmundsen LLC
150 North Michigan Avenue
Suite 3300
Chicago, Illinois 60601
(312) 894-3200
Toll Free (888) 855-5784

concerning the above-named individual.

The nature of the information to be disclosed is:

Complete Record.

Any copy of this Authorization shall be considered as valid as the original.

Benefitee's signature

Date: _____

EXHIBIT “B”

July 23, 2008 e-mail

Engelking, Sandra

From: Engelking, Sandra
Sent: Wednesday, July 23, 2008 5:40 PM
To: 'Scott Pyles'
Subject: Herring v. Marr

Good evening Scott –

I write to inquire about the status of your client's Social Security Disability records and execution of the Authorization.

Please advise. I look forward to hearing from you.

Thank you,

Sandra J. Engelking

SmithAmundsen LLC

150 North Michigan Avenue, Suite 3300, Chicago, Illinois 60601

☎ Phone (312) 894-3287 | ☎ Fax (312) 894-3210 | ✉ SEngelking@salawus.com | 🌐 <http://www.salawus.com>



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